

**Practitioner's Docket No. 762302-1050**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Henrik E. Hedlund

Confirmation No.: 3703

Application No.: 10/633,357

Group No.: 3623

Filed: 08/01/2003

Examiner: Pats, Justin

For: SYSTEM AND METHOD FOR DYNAMIC SCHEDULING OF PERSONNEL

**Mail Stop: AF**

Commissioner for Patents

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In response to the final Office action dated 04/07/2009, and the advisory action dated 06/23/2009, the Applicant respectfully requests review of the final rejection in the above-identified application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith.

Claims 1, 3-22, and 25-34 stand rejected under 35 U.S.C. § 103(a). The Applicant respectfully disagrees with the rejections and believes such allegations represent clear error in establishing *prima facie* rejections under 35 U.S.C. §103. The Applicant thus respectfully requests review of the rejections for at least the following reasons.

## REMARKS

Claims 1, 3-22, and 25-34 are pending in the application. Claims 1, 3-22, and 25-34 currently stand rejected. The Applicant respectfully requests consideration of the following remarks and allowance of the claims.

### 35 U.S.C. § 103 Rejections

Claims 1, 3-14, 16, 19-22, 26-31, and 33-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,111,391 (Fields) in view of U.S. Patent Application Publication No. 2002/0143597 A1 (Andre) further in view of a public use of Click2Staff software, as evidenced by *Employee Scheduling Becomes More Complex*, Credit Union Times, March 13, 2002, p. 1-4 (hereinafter Employee Scheduling); Berkofsky, *Banks to Start Embracing Workforce Technology*, Bank Systems & Technology, 2002, p. 1-3 (hereinafter Berkofsky); Norton-Miller, *GECU Saves Money With ASP Staffing Model*, microbanker.com, Feb 2003, p.1-4 (hereinafter Norton-Miller); *Wells Using Traffic Prediction Software*, American Banker, Sept. 13, 2002, p. 1 (hereinafter Wells); and *Exametric's Click2Staff to Optimize Workforce at First Hawaiian Bank*, exametic.com, Nov. 11, 2002, p. 1-2 (hereinafter Hawaiian Bank). The Applicant respectfully traverses the rejection for at least the following reasons.

In particular, the Applicant respectfully asserts that the Examiner has clearly erred by failing to show that the art of record teaches or suggests each and every limitation of claim 1 as required for a *prima facie* rejection under 35 U.S.C. § 103(a). Specifically, the prior art fails to teach *processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules*, as recited in claim 1.

On page 6 of the final Office action, the Examiner admits that Fields in view of Andre does not explicitly teach processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, wherein the historical shift patterns comprise a resource dependent shift pattern, a time dependent shift pattern, and a ratio dependent shift pattern. Instead, the Examiner asserts that the Click2Staff software teaches these limitations. However, the Applicant asserts that, even if the Click2Staff software contained the attributes as discussed in the Examiner's cited articles, Fields in view of Andre and Click2Staff software fails to teach or suggest every limitation of claim 1.

In the advisory action, the Examiner asserts that “a pattern recognition procedure can be reasonably interpreted as any way of recognizing a representative sample of tendencies” (advisory action, p. 2). However, the pattern recognition procedure recited in claim 1 does not apply to “a representative sample of tendencies.” On the contrary, claim 1 recites ***processing past schedules*** using a pattern recognition procedure. Thus, the pattern recognition procedure only applies to past schedules, and does not apply generally to any representative sample of tendencies as asserted by the Examiner.

The Examiner then asserts that “Click2Staff’s use of an algorithm to analyze historical bank data to discover customer traffic trends meets this definition because a Click2Staff’s algorithm uses a representative data sample, for example, ***a year’s worth of bank transaction data*** as evidenced by Norton-Miller, to recognize a tendency associated with that data” (advisory action, p. 2, emphasis added). The use of bank transaction data to recognize a tendency associated with that data does not teach or suggest processing ***past schedules*** using a pattern recognition procedure, as recited in claim 1. Transaction data relates to ***bank customer*** transactions, such as deposits, withdrawals, or balance inquiries. In contrast, the term “schedule” refers to a ***workforce***, such as the “optimized workforce schedule” recited in claim 1.

The Examiner asserts that “past schedules are processed by Click2Staff because Click2Staff analyses a file or list of past transaction data that is time-specific and includes such time-related data” (advisory action, p. 2). As discussed above, analyzing past ***transaction*** data, even time-specific transaction data, does not teach or suggest processing past ***schedules*** using a pattern recognition procedure. In fact, none of the cited articles indicate that Click2Staff possessed the feature of processing ***past schedules*** using a pattern recognition procedure, as recited in claim 1. For example, the Hawaiian Bank reference states that “Click2Staff will analyze the transaction volume at each branch...and subsequently schedule staff” (Hawaiian Bank, p.1). Likewise, Norton-Miller discloses the “ability to accurately forecast the transactional information at a specific branch, by day/date, by specific type of transaction by the half-hour” (Norton-Miller, p. 2).

In contrast, claim 1 recites ***processing past schedules*** using a pattern recognition procedure to recognize ***historical shift patterns for a particular position indicated in the past schedules***. The transactional analysis attributed to the Click2Staff software fails to teach or suggest recognizing historical shift patterns for a particular position indicated in the past

schedules. The Examiner's cited articles do not indicate that the past transaction data includes any information related to a historical shift pattern or a particular position. Thus, even assuming the past transaction data could be construed as past schedules, analyzing the past transaction data fails to teach or suggest recognizing ***historical shift patterns for a particular position indicated in the past schedules***. Without containing information related to historical shift patterns for a particular position, the past transaction data cannot be analyzed to ***recognize*** historical shift patterns for a particular position indicated in the past schedules.

Therefore, the Examiner's purported evidence – separately or in combination – fails to teach or suggest that the Click2Staff software possessed the features of processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, as recited in claim 1. Thus, the Examiner has clearly erred by failing to show that the art of record teaches or suggests each and every limitation of claim 1 as required for a *prima facie* rejection under 35 U.S.C. § 103(a).

Based on the above comments, neither Fields nor Andre nor Click2Staff software – separately or in combination – teach or suggest all of the limitations of independent claim 1. Claim 1 is therefore allowable over the art of record and such indication by the Examiner is respectfully requested.

Independent claim 21 contains limitations similar to those of claim 1 and is therefore allowable over Fields in view of Andre and Click2Staff software for at least the same reasons as discussed above for claim 1. Dependent claims 3-14, 16, 19, 20, 22, 26-31, and 33-34, while separately allowable over the art of record, depend from otherwise allowable independent claims. The Applicant therefore refrains from further discussion of the dependent claims for the sake of brevity.

Claims 15, 17, and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of a public use of GMT Planet software, as evidenced by gmtcorp.com, GMTPlanet, 2001, retrieved from web.archive.org, <http://web.archive.org/web/20010415113036/www.gmtcorp.com> (GMTcorp.com). Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of U.S. Patent No. 6,823,315 B1 (Bucci). Claim 25 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff

software, further in view of U.S. Patent No. 7,222,082 B1 (Adhikari). Claims 15, 17, 18, 25, and 32, while separately allowable over the art of record, depend from otherwise allowable independent claims. The Applicant therefore refrains from further discussion of the dependent claims for the sake of brevity.

Therefore, in light of the above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1, 3-22, and 25-34.

### **CONCLUSION**

Based on the above remarks, the Applicant submits that the claims in their present form are allowable over the art of record. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims at the Examiner's earliest convenience.

Included herewith is payment for the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith. Also included herewith is payment for the appropriate fee under 37 C.F.R. § 1.17(a)(1) for a one-month extension of time (37 C.F.R. § 1.136(a)). The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine that additional fees are necessary, the Office is hereby requested to contact the undersigned to arrange for payment of the applicable fees.

Respectfully submitted,

/Eric M. Collins/

#### **SIGNATURE OF PRACTITIONER**

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 762302-1050									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on <u>August 7, 2009</u>  Signature <u>/Sarah McLaughlin/</u>  Typed or printed name <u>Sarah McLaughlin</u>	Application Number  10/633,357		Filed  Aug 1, 2003								
	First Named Inventor  Henrik E. Hedlund										
	Art Unit  3623	Examiner  Pats, Justin									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding: 5px;"><u>/Eric M. Collins/</u> Signature</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding: 5px;"><u>Eric M. Collins</u> Typed or printed name</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>62,217</u></td><td style="vertical-align: top; padding: 5px;"><u>(720) 562-2280</u> Telephone number</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top; padding: 5px;"><u>August 7, 2009</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	<u>/Eric M. Collins/</u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Eric M. Collins</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>62,217</u>	<u>(720) 562-2280</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>August 7, 2009</u> Date
<input type="checkbox"/> applicant/inventor.	<u>/Eric M. Collins/</u> Signature										
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<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>August 7, 2009</u> Date										
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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